

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

STEVEN ROGER HURLBUT,

Plaintiff,

vs.

DECISION AND ORDER
05-CV-6555

ELIOT SPITZER, The Attorney General of the
State of New York,

Defendant,

Siragusa, J. Before the Court is petitioner's motion (# 15) seeking *in forma pauperis* status, a waiver of the filing fee, assignment of counsel and a certificate of appealability pursuant to 28 U.S.C. § 1915. Petitioner's request is made following entry of this Court's Decision and Order (# 10) dismissing his complaint. In that Decision, the Court determined that it did not have jurisdiction since petitioner was no longer in custody, and also certified, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal taken would not be in good faith.

In his current application, petitioner alleges that he has new evidence that the prosecutor allowed the state's witnesses to give perjured testimony and withheld evidence that would have changed the outcome of the trial. In the final paragraph of his motion, petitioner states:

Petitioner is asking permission from this court to be allowed to file a 1983 action for civil rights violations against those responsible while acting under color of state law to sue those responsible to clear this petitioner's name.

(Pet.'s Mot., at 2.) Neither petitioner's present motion, nor his Notice of Appeal, addresses the jurisdictional issue that originally caused dismissal. Further, a search of the Court's docketing

system shows only this case, 05-CV-6555, has ever been filed by him. Accordingly, the Court does not believe petitioner is constrained by 28 U.S.C. § 1915(g)'s "three strikes" rule from commencing a new action and requesting *in forma pauperis* status, unless he has had other actions dismissed outside this jurisdiction that meet the requirements of § 1915(g). The Court will not provide petitioner with an advisory opinion on his applications for *in forma pauperis* status or to appoint counsel, and those applications are not germane to this present action. Thus, it is hereby

ORDERED, that petitioner's application (# 15) is denied in its entirety.

The Court hereby certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and leave to appeal to the Court of Appeals as a poor person is denied. *Coppedge v. United States*, 369 U.S. 438 (1962). Further requests to proceed on appeal as a poor person should be directed, on motion, to the United States Court of Appeals for the Second Circuit, in accordance with Rule 24 of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

DATED: March 16, 2007
Rochester, New York

ENTER.

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge